

HOUSE BILL NO. 481

INTRODUCED BY G. HENDRICK

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING WORKERS' COMPENSATION COVERAGE FOR VOLUNTARY EMERGENCY MEDICAL SERVICE PROVIDERS UNDER CERTAIN CONDITIONS; REVISING PUBLIC POLICY TO RECOGNIZE EQUITY AMONG VOLUNTEER PUBLIC SAFETY WORKERS; REVISING CALCULATIONS FOR PREMIUMS AND BENEFITS FOR VOLUNTEER FIREFIGHTERS; AMENDING SECTIONS 39-71-105, 39-71-118, AND 39-71-123, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-105, MCA, is amended to read:

"39-71-105. Declaration of public policy. For the purposes of interpreting and applying this chapter, the following is the public policy of this state:

(1) An objective of the Montana workers' compensation system is to provide, without regard to fault, wage-loss and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole but are intended to assist a worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

(2) It is the intent of the legislature to assert that a conclusive presumption exists that recognizes that a holder of a current, valid independent contractor exemption certificate issued by the department is an independent contractor if the person is working under the independent contractor exemption certificate. The holder of an independent contractor exemption certificate waives the rights, benefits, and obligations of this chapter unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(3) A worker's removal from the workforce because of a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, an objective of the workers' compensation system is to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

(4) Montana's workers' compensation and occupational disease insurance systems are intended to be

1 primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able
2 to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to
3 minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

4 (5) This chapter must be construed according to its terms and not liberally in favor of any party.

5 (6) It is the intent of the legislature that:

6 (a) stress claims, often referred to as "mental-mental claims" and "mental-physical claims", are not
7 compensable under Montana's workers' compensation and occupational disease laws. The legislature recognizes
8 that these claims are difficult to objectively verify and that the claims have a potential to place an economic
9 burden on the workers' compensation and occupational disease system. The legislature also recognizes that
10 there are other states that do not provide compensation for various categories of stress claims and that stress
11 claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are
12 compensable under the present system, and it is within the legislature's authority to define the limits of the
13 workers' compensation and occupational disease system.

14 (b) for occupational disease claims, because of the nature of exposure, workers should not be required
15 to provide notice to employers of the disease as required of injuries and that the requirements for filing of claims
16 reflect consideration of when the worker knew or should have known that the worker's condition resulted from
17 an occupational disease. The legislature recognizes that occupational diseases in the workplace are caused by
18 events occurring on more than a single day or work shift and that it is within the legislature's authority to define
19 an occupational disease and establish the causal connection to the workplace.

20 (7) The legislature recognizes the value of voluntary public safety workers who put their lives at risk to
21 serve others. The legislature also recognizes the need to avoid inequity between voluntary public safety workers
22 who are eligible for workers' compensation coverage and have jobs and voluntary public safety workers who are
23 eligible for workers' compensation coverage and are either temporarily unemployed or not being paid wages for
24 their work and might have to hire an individual to provide child care or other household services at a cost to their
25 families."

26
27 **Section 2.** Section 39-71-118, MCA, is amended to read:

28 **"39-71-118. Employee, worker, volunteer, volunteer emergency medical technician, and volunteer**
29 **firefighter defined.** (1) As used in this chapter, the term "employee" or "worker" means:

30 (a) each person in this state, including a contractor other than an independent contractor, who is in the

1 service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied,
2 oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the
3 elected and appointed paid public officers and officers and members of boards of directors of quasi-public or
4 private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the
5 corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not
6 otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of
7 the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic
8 employment is excluded.

9 (b) any juvenile who is performing work under authorization of a district court judge in a delinquency
10 prevention or rehabilitation program;

11 (c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training
12 under a state or federal vocational training program, whether or not under an appointment or contract of hire with
13 an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving
14 payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational
15 training programs, as outlined in this subsection, while they are on the premises of a public school or community
16 college.

17 (d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

18 (e) a person, other than a juvenile as described in subsection (1)(b), who is performing community
19 service for a nonprofit organization or association or for a federal, state, or local government entity under a court
20 order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under
21 appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment
22 from a third party. For a person covered by the definition in this subsection (1)(e):

23 (i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment
24 award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part
25 4, for a full-time employee at the time of the injury; and

26 (ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the
27 minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service
28 required under the order from the court or hearings officer.

29 (f) an inmate working in a federally certified prison industries program authorized under 53-1-301;

30 (g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under

1 Title 7, chapter 34, part 1; and

2 (h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is
3 considered an employee for workers' compensation purposes only. The department of public health and human
4 services shall provide workers' compensation coverage for recipients of financial assistance, as defined in
5 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or
6 private worksites through an endorsement to the department of public health and human services' workers'
7 compensation policy naming the public or private worksite entities as named insureds under the policy. The
8 endorsement may cover only the entity's public assistance participants and may be only for the duration of each
9 participant's training while receiving financial assistance or while participating in the food stamp program under
10 a written agreement between the department of public health and human services and each public or private
11 entity. The department of public health and human services may not provide workers' compensation coverage
12 for individuals who are covered for workers' compensation purposes by another state or federal employment
13 training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for
14 work of a similar nature at the assigned worksite.

15 (2) The terms defined in subsection (1) do not include a person who is:

16 (a) participating in recreational activity and who at the time is relieved of and is not performing prescribed
17 duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other
18 emolument of employment;

19 (b) performing voluntary service at a recreational facility and who receives no compensation for those
20 services other than meals, lodging, or the use of the recreational facilities;

21 (c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under
22 the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on
23 behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

24 (d) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and
25 providing care without wage compensation to no more than six foster children in the provider's own residence.
26 The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure
27 and recreational activities, and providing for other needs and activities arising in the provision of in-home foster
28 care.

29 (3) With the approval of the insurer, an employer may elect to include as an employee under the
30 provisions of this chapter any volunteer as defined in subsection (2)(c).

(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a governmental fire agency organized under Title 7, chapter 33, except 7-33-4109.

(b) The term "volunteer emergency medical technician" means a person who holds a certificate issued by the board of medical examiners as provided in Title 50, chapter 6, part 2, and who serves the public through a private safety agency, as defined in 10-4-101, or a not-for-profit ambulance service or quick response unit attached to a police, emergency medical rescue, or fire protection facility that has employees otherwise covered by this chapter.

~~(b)~~(c) The term "volunteer hours" means all the time spent by a volunteer firefighter or a volunteer emergency medical technician in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.

(5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$900 a month and not more than 1 1/2 times the state's average weekly wage.

(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired

1 by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer
2 or manager is not considered an employee within this chapter until notice has been given.

3 (c) A change in elected wages must be in writing and is effective at the start of the next quarter following
4 notification.

5 (d) ~~All~~ Except as provided in subsections (7) and (12), all weekly compensation benefits must be based
6 on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (6)(d). For
7 premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing
8 employer may elect an amount of not less than \$200 a week and not more than 1 1/2 times the state's average
9 weekly wage.

10 (7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the
11 county commissioners or trustees for a fire service area may elect to include as an employee within the provisions
12 of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage
13 under this section may not receive disability benefits under Title 19, chapter 17.

14 (b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium
15 ~~and weekly benefit~~ purposes based on the number of volunteer hours of each firefighter, but no more than 60
16 hours, times the state's average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the
17 state's average weekly wage.

18 (c) Benefits for a volunteer firefighter who is injured during volunteer hours while in the course and scope
19 of employment are:

20 (i) for a volunteer firefighter with concurrent employment based on 66 2/3 of the average actual wages
21 in the volunteer firefighter's regular employment up to the state's average weekly wage;

22 (ii) for a volunteer firefighter who is not employed or is a

23 ~~(e) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but~~
24 ~~who is covered as a volunteer firefighter pursuant to subsection (7)(a) and when injured in the course and scope~~
25 ~~of employment as a volunteer firefighter, may in addition to the benefits described in subsection (7)(b) be eligible~~
26 ~~for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080~~
27 ~~hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the~~
28 ~~county commissioners or trustees for a fire service area may make an election for benefits. If an election is made,~~
29 ~~payrolls must be reported and premiums must be assessed on the assumed wage~~ 66 2/3 of the state's average
30 weekly wage.

(8) Except as provided in Title 39, chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(10) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(11) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection (10)(d).

(12) (a) A private safety agency, as defined in 10-4-101, or a not-for-profit ambulance service or quick response unit attached to a police, emergency medical rescue, or fire protection facility that has employees otherwise covered by this chapter may elect to include as an employee within the provisions of this chapter a volunteer emergency medical technician who serves public safety through the private safety agency or

1 not-for-profit ambulance or quick response unit.

2 (b) In the event of an election, the employer shall report payroll for all volunteer emergency medical
3 technicians for premium purposes based on the number of volunteer hours of each emergency medical
4 technician, but no more than 60 hours, times the state's average weekly wage divided by 40 hours.

5 (c) Benefits for a volunteer emergency medical technician who is injured during volunteer hours while
6 in the course and scope of employment are:

7 (i) for a volunteer emergency medical technician who has concurrent employment based on 66 2/3 of
8 the average actual wages in the volunteer emergency medical technician's regular employment, up to the state's
9 average weekly wage;

10 (ii) for a volunteer emergency medical technician who is not employed or is a self-employed sole
11 proprietor or partner who has elected not to be covered under this chapter, 66 2/3 of the state's average weekly
12 wage.

13 (d) A student who is a volunteer emergency medical technician and on the roster of a private safety
14 agency, as defined in 10-4-101, or a not-for-profit ambulance service or quick response unit attached to a police,
15 emergency medical rescue, or fire protection facility that has employees otherwise covered by this chapter is
16 eligible for coverage under this subsection (12).

17 (e) A volunteer emergency medical technician who receives workers' compensation coverage under this
18 section may not receive disability benefits under Title 19, chapter 17, if eligible as both a volunteer firefighter and
19 a volunteer emergency medical technician."

20
21 **Section 3.** Section 39-71-123, MCA, is amended to read:

22 **"39-71-123. Wages defined.** (1) "Wages" means all remuneration paid for services performed by an
23 employee for an employer, or income provided for in subsection (1)(d). Wages include the cash value of all
24 remuneration paid in any medium other than cash. The term includes but is not limited to:

25 (a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays,
26 vacations, and periods of sickness;

27 (b) backpay or any similar pay made for or in regard to previous service by the employee for the
28 employer, other than retirement or pension benefits from a qualified plan;

29 (c) tips or other gratuities received by the employee, to the extent that tips or gratuities are documented
30 by the employee to the employer for tax purposes;

(d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration;

(e) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(f) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

(2) The term "wages" does not include any of the following:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;

(b) the amount of the payment made by the employer for employees, if the payment was made for:

(i) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(ii) sickness or accident disability under a workers' compensation policy;

(iii) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family;

(iv) death, including life insurance for the employee or the employee's immediate family;

(c) vacation or sick leave benefits accrued but not paid;

(d) special rewards for individual invention or discovery; or

(e) monetary and other benefits paid to a person as part of public assistance, as defined in 53-4-201.

(3) (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except that if the term of employment for the same employer is less than four pay periods, the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work.

(b) For good cause shown, if the use of the last four pay periods does not accurately reflect the claimant's employment history with the employer, the wage may be calculated by dividing the total earnings for an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period, including periods of idleness or seasonal fluctuations.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3). As used in this

subsection, "concurrent employment" means employment in which the employee was actually employed at the time of the injury and would have continued to be employed without a break in the term of employment if not for the injury.

(b) Except as provided in ~~39-71-118(7)(e)~~ 39-71-118(7)(c)(ii) and (12)(c)(ii), the compensation benefits for a covered volunteer must be based on the average actual wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except for the wages earned by individuals while engaged in the employments outlined in 39-71-401(3)(a) who elected not to be covered, from which the employee is disabled by the injury incurred."

NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 2009.

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